IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 978 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

C.D. SONDARVA

Versus

M.V. PADHIAR

Appearance:

1. Special Civil Application No. 978 of 1988

MR RA MISHRA for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

GOVERNMENT PLEADER for Respondents No. 2-5

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 27/02/2002

ORAL JUDGEMENT

The petitioner has preferred this petition against the judgment and order dated 5.6.87 passed by the

Gujarat Civil Services Tribunal in Appeal No.553/83 whereby the tribunal partly allowed the appeal and set aside the order of promotion to the petitioner to the post of Head Clerk and held that since the petitioner herein is already recruited to the post in question and since the respondent No.1 herein is already given promotion to the post of Head Clerk, in case, the Honourable Supreme Court overrules the judgment of the Division Bench of this court in Special Civil Application No.374/78 (Tike's case) then as a consequence thereof the respondent No.1 shall stand reverted and the statusquo ante shall be restored.

2. The facts of the case are that the petitioner was promoted from the post of Senior Clerk to the post of Head Clerk. Against the decision of the authority of granting permission to the petitioner herein, one Mr.M.V.Padhiar, the respondent No.1 herein had preferred appeal being Appeal No.553/83 before the Gujarat Civil Services Tribunal (hereinafter referred to as "the Tribunal") and in the said appeal initially the petitioner was not shown as party and the tribunal had passed the judgment and order on 31.12.1984. The said decision of the tribunal was challenged by the petitioner by preferring Special Civil Application No.345/85 and ultimately the said petition came to be allowed by this court only on a short point that the petitioner who was affected by the outcome as he was not implemented as party and vide order dated 4.3.85 this court quashed the order of the tribunal and directed the tribunal to decide the matter afresh.

3. Thereafter, the appeal came to be heard afresh by the tribunal and ultimately on June 5, 1987 judgment and order came to be delivered by the tribunal whereby the appeal was partly allowed and the order granting promotion to the petitioner herein was set aside with a clarification that if the judgment of the Division Bench of this court in Special Civil Application No.374/78 is reversed by the Supreme Court, the respondent No.1 herein shall stand reverted and statusquo ante shall be restored.

4. I have heard Mr.R.A.Mishra appearing for the petitioner and Ms.Manisha Lavkumar, Ld.AGP for respondents. It is also reported to this court by Mr.Mishra that by afflux of time the petitioner has reached the age of superannuation and retired from service, but, however, his instructions are to proceed with the matter and I have heard Mr.Mishra on merits.

5. A perusal of the order of the tribunal clearly shows that the tribunal has decided the whole appeal on the basis its judgment in the case of Tike. Said judgment of the tribunal was carried before this court in Special Civil Application No.374/78 and the Division Bench of this court as per its judgment dated 1.4.80 confirmed the judgment of the tribunal. It may be stated that the tribunal had taken the view in the said Tike's case that the condition of roster is not applicable. It was also considered by the tribunal that against the decision of the Division Bench of this court matter is carried to Supreme Court and the said matter is pending. However, it was observed by the tribunal that since the operation of the judgment of the Division bench is not stayed, it is not possible for the tribunal to take a contrary view. Considering the field as was virgin. The tribunal on the basis of law of precedent considered that it is bound by the judgment of the Division Bench of this court and therefore it has no option but to take same view as it was taken in Apex Court. Ultimately, for the reasons recorded by the tribunal, appeal came to be partly allowed. However, tribunal while allowing the appeal had set aside the order of granting promotion to the petitioner herein, but the tribunal had also clarified that if the Supreme Court reverses the order of the Division Bench of this court in Special Civil Application No.374/78 then the respondent No.1 shall stand reversed and statusquo ante shall be restored.

6. Considering the facts and circumstances of the case, I am of the view that no error can be found with the order of the tribunal when the tribunal has acted within its jurisdiction and as per law of precedent. Even otherwise also the tribunal is a court subordinate to the Division Bench of this court and has taken a view that there was no option for the tribunal but to follow the view taken by the Division Bench of this court. At this stage Mr.Mishra contended that the petitioner would like to verify what has happened in the proceedings before the Supreme Court and he also wants to verify as to whether the decision of the Division Bench of this court is reversed by the Supreme Court or not. I am of the view that the same is not required as the tribunal while passing the order dated 5.6.87 has taken sufficient care of the said situation. Still however, upon examining the legality and validity of the order passed by the tribunal, in exercise of powers under Article 227 of the Constitution, it can not be said that any error apparent on the face of the record is committed by the tribunal. Contention of Mr.Mishra was that if the Supreme Court reverses the order passed by the Division

Bench of this court, this petition could be decided accordingly. I am afraid that this contention of Mr.Mishra can be accepted because it was already clarified by the tribunal that upon consequence of reversing the decision of the Division Bench of this court the appellant shall stand reverted and statusquo ante can be restored and therefore this petition can not be decided on a circumstance which never existed at the time when the tribunal passed the order. In any event, even if the Supreme Court reverses the decision of the Division Bench of this court in Special Civil Application No.374/78 it will be for the petitioner to pursue his remedy on the said ground but the order of the tribunal can not be found illegal or invalid.

7. In view of the aforesaid, this petition is rejected. Rule is discharged. There shall be no order as to costs.

27.2.2002 (JAYANT PATEL,J)